

1 THOMAS E. MOSS  
UNITED STATES ATTORNEY  
2 RAFAEL M. GONZALEZ, JR.  
ASSISTANT UNITED STATES ATTORNEY  
3 DISTRICT OF IDAHO  
MK PLAZA, PLAZA IV  
4 800 PARK BOULEVARD, SUITE 600  
BOISE, ID 83712-9903  
5 TELEPHONE: (208) 334-1211

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8 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO  
9

10 UNITED STATES OF AMERICA, )

11 Plaintiff, )

12 vs. )

13 MARICELA CORTES-CASTILLO (#02), )

14 Defendant. )  
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Case No. CR 04-092-(02)-S-EJL

RULE 11 PLEA AGREEMENT

ORIGINAL

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1 **I. GUILTY PLEA**

2 **A. Summary of Terms.** Pursuant to Rule 11(c)(1)(A) and (B) of the Federal Rules of  
3 Criminal Procedure, the defendant, the attorney for the defendant, and the Government<sup>1</sup> agree that  
4 the defendant will plead guilty to Counts Six and Seven of the Indictment. The defendant  
5 acknowledges that the plea is voluntary and did not result from force, threats, or promises, other  
6 than any promise made in this Plea Agreement. More specifically, the parties agree as follows:

7 Count Six charges the defendant with Possession of False Immigration Documents, in  
8 violation of Title 18, United States Code, Section 1546(a).

9 Count Seven charges the defendant with Sale of Fraudulent Social Security Cards, in  
10 violation of Title 42, United States Code, 408(a)(7)(C).

11 **B. Acceptance.** Upon acceptance of the defendant's guilty plea(s), and the  
12 defendant's full compliance with the other terms of this Agreement, the Government, under Rule  
13 11(c)(1)(B) of the Federal Rules of Criminal Procedure, agrees to recommend a sentence at the  
14 bottom of the Guidelines range, and agrees that it will dismiss, under Rule 11(c)(1)(A), Counts  
15 One, Two, Three, Four, and Five of the Indictment. Defendant acknowledges, agrees and waives  
16 objection to the fact that the Court may consider "relevant conduct" including relevant conduct  
17 alleged in these dismissed counts in arriving at an appropriate sentence pursuant to Section 1B1.3  
18 of the Sentencing Guidelines.

19 **II. WAIVER OF CONSTITUTIONAL RIGHTS**

20 Defendant understands that she will be placed under oath at the plea hearing and that the  
21 government, in a prosecution for perjury or false statement, has the right to use against the  
22 defendant any statement that the defendant gives under oath. Moreover, the defendant understands  
23 and waives (gives up) the following rights: 1) the right to plead not guilty to the offense(s) charged  
24 against the defendant and to persist in that plea; 2) the right to a trial by jury; and 3) the rights, at  
25 trial, to confront and cross-examine adverse witnesses, to be protected from compelled self-

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<sup>1</sup> The word "Government" in this Agreement refers to the United States Attorney for the  
28 District of Idaho.

1 incrimination, to testify, to present evidence and to compel the attendance of witnesses. The  
2 defendant understands that by pleading guilty she waives (gives up) all of the rights set forth  
3 above. The defendant fully understands that by entering a plea of guilty, if that plea is accepted by  
4 the District Court, there will be no trial and defendant will have waived (given up) these trial  
5 rights.

### 6 **III. NATURE OF THE CHARGES**

7 **A. Elements of the Crime.** The elements of the crime of Possession of False  
8 Immigration Documents, as charged in Count Six, are as follows:

- 9 1. The defendant knowingly possessed an INS alien registration receipt card;
- 10 2. The document was counterfeit; and
- 11 3. The defendant knew at the time she possessed it that the document had been  
12 counterfeit.

13 **B. Elements of the Crime.** The elements of the crime of Sale of Fraudulent Social  
14 Security Cards, as charged in Count Seven, are as follows:

- 15 1. The defendant knowingly sold a Social Security Card;
- 16 2. The Social Security Card was counterfeit; and
- 17 3. The defendant knew at the time she sold it that the Social Security Card was  
18 counterfeit.

19 **C. Factual Basis.** If this matter were to proceed to trial, the Government and the  
20 defendant agree that the following facts would be proven beyond a reasonable doubt, which facts  
21 accurately represent the defendant's readily provable offense conduct. This factual summary is  
22 not intended to detail all relevant conduct, or cover all specific offense characteristics, which will  
23 be determined by the Court after its consideration of the Presentence Report.

24 On or about May 22, 2003, the defendant, Francisco J. Castillo-Machuca, spoke with a  
25 cooperating individual ("CI") regarding the purchase of counterfeit identification documents.  
26 Castillo-Machuca told the individual that the counterfeit identification documents would be ready  
27 on May 23, 2003, and cost \$100.  
28

1 On or about May 23, 2003, the CI drove to the residence of Francisco J. Castillo-Machuca  
2 and Maricela Cortes-Castillo, man and wife, 403 Poverty Flats Road, Jerome, Idaho, where  
3 Cortes-Castillo delivered one counterfeit social security card, as described in Count Three of the  
4 Indictment, to the individual. Cortes-Castillo instructed the individual to return to the residence  
5 after her husband (Castillo-Machuca) was scheduled to finish working to retrieve the previously-  
6 ordered fraudulent alien registration card. Later that afternoon, the individual returned to the  
7 residence and spoke with Cortes-Castillo, who delivered one counterfeit alien registration receipt  
8 card, as described in Count Two of the Indictment, to the individual. The individual paid Cortes-  
9 Castillo the agreed upon price of \$100 for the counterfeit cards.

10 On or about September 27 and 30, 2003, a CI spoke with Cortes-Castillo regarding the  
11 purchase of fraudulent identification documents and agreed to purchase the documents on  
12 September 30, 2003.

13 On or about September 30, 2003, the same individual met with Carlos G. Castillo-Cortes in  
14 Jerome, Idaho, and purchased for \$100 two counterfeit identification documents as described in  
15 Counts Four and Five of the Indictment.

16 On March 2, 2004, a CI made contact with Francisco J. Castillo-Machuca and ordered six  
17 sets of counterfeit identification documents, which were to be delivered on March 2, 2004.

18 On March 2, 2004, the individual went to the Poverty Flats residence and met with  
19 Castillo-Machuca and Cortes-Castillo. The three then drove to a residence in Jerome, Idaho,  
20 where Castillo-Machuca asked to be dropped off and instructed the individual to return in an hour  
21 for the previously ordered identification documents. When the individual returned, Castillo-  
22 Machuca and Cortes-Castillo entered the vehicle and were driven to their residence. While  
23 driving, Castillo-Machuca gave the individual the six sets of documents, as described in Counts  
24 Six and Seven of the Indictment. The individual paid Castillo-Machuca \$600 for the documents.

25 All documents purchased by the CI were examined by a qualified forensic document  
26 examiner and determined to be counterfeit.

1 **IV. SENTENCING FACTORS**

2 **A. Maximum Penalties.** A violation of Title, United States Code, Section 1546(a),  
3 Possession of False Immigration Documents, as charged in Count Six, is punishable by a term of  
4 imprisonment of ten (10) years, a term of supervised release of not more than three (3) years, a  
5 maximum fine of \$250,000, and a special assessment of \$100..

6 A violation of Title 42, United States Code, Section 408(a)(7)(C), Sale of Fraudulent  
7 Social Security Cards, as charged in Count Six, is punishable by a term of imprisonment of  
8 five (5) years, a term of supervised release of not more than three (3) years, a maximum fine of  
9 \$250,000, and a special assessment of \$100.

10 **B. Supervised Release.**

11 If defendant is sentenced to one year in prison, or less, the Court may also order that,  
12 following release from prison, defendant be placed on supervised release for not more than three  
13 years. If defendant is sentenced to imprisonment for more than one year, such a term of  
14 supervised release will be imposed. The defendant will be sentenced to a term of supervised  
15 release to be served after incarceration.

16 The defendant's term of supervised release will be a specific (i.e., a determinate) term  
17 chosen by the Court at sentencing. The combination of prison time and supervised release is  
18 permitted, by law, to exceed the maximum term of incarceration allowed under the statute(s) that  
19 defendant is pleading guilty to violating. Violation of any condition of supervised release may  
20 result in defendant being imprisoned for the entire term of supervised release or being prosecuted  
21 for contempt of court under Title 18, United States Code, Section 401(3).

22 **C. Fines and Costs.** Unless the Court determines that the defendant will not  
23 reasonably be able to pay a fine, or that paying a fine will unduly burden any of the defendant's  
24 dependents, a fine shall be imposed. There is no agreement as to the amount of the fine. The  
25 Court may also order the defendant to pay the costs of imprisonment, probation, and supervised  
26 release.

1           **D.     Special Assessment.** Defendant will pay a special assessment of \$100.00 per  
2 count, in addition to any fine imposed. This assessment will be paid by defendant before sentence  
3 is imposed, and defendant will furnish a receipt at sentencing. Payment is to be made to the  
4 United States District Court, Clerk's Office, Federal Building and United States Courthouse, 550  
5 W. Fort Street, Fourth Floor, Boise, ID 83724.

6           **V.     UNITED STATES SENTENCING GUIDELINES**

7           **A.     Application of Sentencing Guidelines.** Defendant understands that defendant will  
8 be sentenced under the Federal Sentencing Guidelines and that: (1) the sentence has not yet been  
9 determined by the District Judge; (2) any estimate of the likely sentence received from any source  
10 is a prediction and not a promise; and (3) the District Judge has the final authority to decide what  
11 the sentence will be.

12           The defendant also understands that the Court will determine the applicable sentencing  
13 factors at sentencing and that the Court's determination will affect the sentence range under the  
14 Sentencing Guidelines. While the Court may take the defendant's cooperation and the  
15 recommendations of the parties into account in determining the sentence to be imposed, the Court  
16 has complete discretion to impose a sentence other than the sentence recommended, including the  
17 maximum sentence possible for the crimes to which defendant has pled.

18           **B.     Waiver of Application of *Blakely v. Washington*.** The defendant, by entering this  
19 plea, also waives any right to have facts that the law makes essential to the punishment either  
20 (1) charged in the Indictment, (2) proven to a jury, or (3) proven beyond a reasonable doubt. The  
21 defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines and  
22 to have the sentence based on facts to be found by the sentencing judge by a preponderance of the  
23 evidence. The defendant explicitly acknowledges that her plea to the charged offense(s)  
24 authorizes the Court to impose any sentence, up to and including the statutory maximum sentence,  
25 that is authorized by the Sentencing Guidelines.

1           C.       **Sentencing Guidelines Recommendations and Requests.**

2           1.       **Acceptance of Responsibility.** Unless the Government learns of new  
3 information to the contrary, defendant will be entitled to a reduction of two levels in the combined  
4 adjusted offense level, under Section 3E1.1(a) of the Sentencing Guidelines, if the defendant  
5 clearly accepts responsibility for the offense. The Government will move for an additional one-  
6 level reduction in the combined offense level under Section 3E1.1(b) if the following conditions  
7 are met: the defendant qualifies for a decrease under Section 3E1.1(a); the offense is level 16 or  
8 greater; and the defendant has assisted authorities in the investigation or prosecution of  
9 defendant's own misconduct by timely notifying authorities of defendant's intention to enter a plea  
10 of guilty, thereby permitting the government to avoid preparing for trial and permitting the Court  
11 to allocate its resources efficiently. If, at any time prior to imposition of sentence, the defendant  
12 fails to meet the criteria set out in Section 3E1.1 of the Sentencing Guidelines, or acts in a manner  
13 inconsistent with acceptance of responsibility, the Government will not make such a  
14 recommendation and/or motion or, if one has already been made, it will withdraw the  
15 recommendation and/or motion.

16           2.       **Role in the Offense.** The Government agrees to recommend that the  
17 defendant's offense level be decreased by four level(s) for defendant's minimal role in the offense  
18 pursuant to Section 3B1.2(b) of the Sentencing Guidelines.

19           3.       **Downward Departure Request by Defendant.** The defendant will not  
20 seek a downward departure without first notifying the Government of defendant's intent to seek a  
21 downward departure and defendant's reasons and basis therefor, 21 days before the date set for  
22 sentencing.

23       **VII.   WAIVER OF APPEAL AND 28 U.S.C. § 2255 RIGHTS**

24           The defendant is aware that Title 18, United States Code, Section 3742 affords defendant  
25 the right to appeal the sentence imposed in this case. Acknowledging this, in exchange for the  
26 other terms of this Agreement, the defendant knowingly and voluntarily gives up (waives) all  
27 appeal rights defendant may have regarding both defendant's conviction and sentence, including  
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1 any restitution or forfeiture order, or to appeal the manner in which the sentence was imposed,  
2 unless the sentence exceeds the maximum permitted by statute, or is the result of an incorrect  
3 application of the Sentencing Guidelines to which the defendant filed a proper and timely  
4 objection.

5 The defendant is also aware that under certain circumstances a defendant has the right to  
6 collaterally challenge defendant's sentence through a habeas petition such as a motion pursuant to  
7 Title 28, United States Code, Section 2255. Acknowledging this, in exchange for the other terms  
8 of this Agreement, the defendant knowingly and voluntarily gives up (waives) defendant's right to  
9 contest defendant's pleas, conviction, or sentence in any post-conviction proceeding, including any  
10 proceeding authorized by Title 28, United States Code, Section 2255, except as to an appeal  
11 claiming ineffective assistance of counsel based upon facts discovered after the entry of  
12 defendant's guilty pleas.

13 The defendant further understands that nothing in this Plea Agreement shall affect the  
14 Government's right and/or duty to appeal as set forth in Title 18, United States Code,  
15 Section 3742(b).

#### 16 **VIII. PROVIDING INFORMATION FOR THE PRESENTENCE REPORT**

17 The defendant agrees to provide all material financial and other information as may be  
18 requested by a representative of the United States Probation Office for use in preparing a  
19 Presentence Report. Failure to execute releases and/or provide such material information as may  
20 be required is a violation of the terms of this Agreement, and will relieve the Government of its  
21 obligations as set forth in this Agreement, and may subject the defendant to an enhancement under  
22 Guidelines Section 3C1.1, or provide grounds for an upward departure under Section 5K2.0 of the  
23 Sentencing Guidelines, but at the option of the Government, may not constitute grounds for  
24 withdrawing the plea of guilty.

#### 25 **IX. NO RIGHT TO WITHDRAW PLEA**

26 The defendant understands that the Court is not bound to follow any recommendations or  
27 requests made by the parties at the time of sentencing. If the Court decides not to follow any of  
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1 the parties recommendations or requests, the defendant cannot withdraw from this Plea Agreement  
2 or the guilty plea.

3 **X. CONSEQUENCES OF VIOLATING AGREEMENT**

4 **A. Government's Options.** If defendant fails to keep any promise in this Agreement,  
5 including any promise to cooperate, or commits a new crime, the Government is relieved of any  
6 obligation not to prosecute defendant on other charges, including any charges dismissed as part of  
7 this Plea Agreement. Such charges may be brought without prior notice. In addition, if the  
8 Government determines after sentence is imposed under this Agreement that defendant's breach of  
9 the Agreement warrants further prosecution, the Government will have the choice between letting  
10 the conviction(s) under this Plea Agreement stand or vacating such conviction(s) so that such  
11 charge(s) may be re-prosecuted. If the Government makes its determination before sentencing, it  
12 may withdraw from the Plea Agreement in its entirety.

13 **B. Defendant's Waiver of Rights.** Defendant agrees that if defendant fails to keep  
14 any promise made in this Agreement, defendant gives up: (1) the right not to be placed twice in  
15 jeopardy for the offense(s) to which defendant entered a plea of guilty or which were dismissed  
16 under this Agreement; (2) any right under the Constitution and laws of the United States to be  
17 charged or tried in a more speedy manner for any charge that is brought as a result of defendant's  
18 failure to keep this Agreement; and (3) the right to be charged within the applicable statute of  
19 limitations period for any charge that is brought as a result of defendant's failure to keep this  
20 Agreement, and on which the statute of limitations expired after defendant entered into this  
21 Agreement.

22 Furthermore, the defendant further understands and agrees that if defendant does not enter  
23 a valid and acceptable plea, the Government will move to continue the trial now set. The  
24 defendant agrees not to contest such a continuance, and agrees that the resulting delay would be  
25 excludable time under Title 18, United States Code, Sections 3161(h)(1)(I), (h)(3)(A), or  
26 (h)(8)(A). This continuance will be necessary to allow the Government adequate time to prepare  
27 for trial.  
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1 **XI. MISCELLANEOUS**

2 **A. No Other Terms.** This Agreement incorporates the complete understanding  
3 between the parties, and no other promises have been made by the Government to the defendant or  
4 to the attorney for the defendant. This Agreement does not prevent any governmental agency from  
5 pursuing civil or administrative actions against defendant or any property. Unless an exception to  
6 this paragraph is explicitly set forth elsewhere in this document, this Agreement does not bind or  
7 obligate governmental entities other than the United States Attorney's Office for the District of  
8 Idaho. If requested to do so by the defendant or defendant's counsel, the Government will bring  
9 the defendant's cooperation and pleas to the attention of other prosecuting authorities.


10 **B. Plea Agreement Acceptance Deadline.** This plea offer is explicitly conditioned  
11 on acceptance of this plea Agreement no later than 5:00 p.m. on July 16, 2004. It is defendant's  
12 sole and complete responsibility to notify the U.S. Attorney's Office of the acceptance of this  
13 Agreement by the date specified above in order for this offer to be effectively accepted.

14 **XII. UNITED STATES' APPROVAL**

15 I have reviewed this matter and the Plea Agreement. I agree on behalf of the United States  
16 that the terms and conditions set forth above are appropriate and are in the best interests of justice.

17 THOMAS E. MOSS  
UNITED STATES ATTORNEY

18 By:

19   
20 **RAFAEL M. GONZALEZ, JR.**  
Assistant United States Attorney

21 7/8/04  
DATE

22 **XIII. ACCEPTANCE BY DEFENDANT AND COUNSEL**


23 I have read, or have had read to me by an interpreter, and carefully reviewed every part of  
24 this Plea Agreement with my attorney. I understand the Agreement and its effect upon the  
25 potential sentence. Furthermore, I have discussed all of my rights with my attorney and I  
26 understand those rights. No other promises or inducements have been made to me, directly or  
27 indirectly, by any agent of the Government, including any Assistant United States Attorney,  
28 concerning any plea to be entered in this case. In addition, no person has, directly or indirectly,

1 threatened or coerced me to do, or refrain from doing, anything in connection with any aspect of  
2 this case, including entering a plea of guilty. I am satisfied with my attorney's advice and  
3 representation in this case.

4   
5 **MARICELA CORTES-CASTILLO**  
6 Defendant

7 7-30-2004  
8 DATE

9 I have read this Plea Agreement and have discussed the contents of the Agreement with my  
10 client. The Plea Agreement accurately and completely sets forth the entirety of the agreement. I  
11 concur in my client's decision to plead guilty as set forth above.

12   
13 **TYLER D. SMITH**  
14 Attorney for the Defendant

15 7/30/04  
16 DATE

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